

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-211286

**DATE:** October 2, 1984

**MATTER OF:** Department of the Army Civilian Payroll System - Processing of Compensatory Time

**DIGEST:**

With respect to calculating compensatory time available to employees, the gross compensatory time earned, rather than the net amount of compensatory time earned, less time used by an employee in a pay period, applies in making the determination under 5 U.S.C. § 5547 (1982), whether the employee's aggregate rate of pay for any pay period exceeds the maximum rate for grade GS-15. The fact that the employee may have less compensatory time available for use than was actually earned or taken during a pay period is not controlling since the limitation in section 5547 is mandatory.

This decision is in response to a request by D.W. Mikkelson, Lieutenant Colonel, Assistant Comptroller for Finance and Accounting, Department of the Army, for an opinion as to the proper method to be used by the Army in redesigning its standard civilian payroll system to process the earning and use of compensatory time by its civilian employees.

The Assistant Comptroller states that the Department of the Army is redesigning its standard civilian payroll system. The redesigned system will replace the present standard system (STARCIPS), and various other nonstandard mechanized and manual systems now in use.

In the course of developing the new system, a question has been raised concerning the proper treatment of compensatory time as it relates to the maximum biweekly gross pay limitation contained in 5 U.S.C. § 5547 (1982).

As discussed in more detail hereafter, section 5547 precludes an employee from receiving overtime pay during any pay period in an amount that would cause the employee's

aggregate rate of pay for that pay period to exceed the maximum rate for GS-15. Our decisions have held that an employee cannot be granted compensatory time off for overtime hours during a pay period to the extent that the section 5547 limitation would prevent the employee from receiving overtime pay for such hours.

In essence, the Assistant Comptroller's question is how the section 5547 limitation should be calculated to determine compensatory hours available during a pay period -- should the calculation be based on all compensatory hours earned during the pay period or should it be based on the net of hours earned less those used during that pay period? For the reasons stated below, we conclude that the calculation should be based on all hours earned.

Section 5542, Title 5, United States Code (1982), provides for the payment of overtime compensation for hours of work performed by an employee and officially ordered or approved in excess of 40 hours in an administrative workweek or in excess of 8 hours in a day. Section 5543 of the same title permits the head of an agency to grant compensatory time off to an eligible employee in lieu of overtime compensation in an amount equal to the amount of time spent in irregular or occasional overtime work. Eligible employees are those whose rates of basic pay are in excess of the maximum rate of basic pay for GS-10.

Section 5547 of title 5 places a limitation on the amount of premium pay (including overtime) which may be paid to most civilian employees during any pay period, as follows:

"An employee may be paid premium pay under sections 5542, 5545(a)-(c), and 5546(a), (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15. The first sentence of this section shall not apply to any employee of the Federal Aviation Administration who is paid premium pay under section 5546a of this title."

In 26 Comp. Gen. 750 (1947), we held that the restriction placed upon the aggregate compensation which may be paid federal employees by the derivative section of 5 U.S.C. § 5547 precludes an employee from receiving overtime compensation if the amount so received would increase his or her aggregate compensation above the limit set by that section. Further, we held that an employee could not

be authorized compensatory time off as a result of overtime work if the limitation on aggregate compensation prevented the employee from being paid for such work. We have followed this position in subsequent decisions. 37 Comp. Gen. 362 (1957); Edward W. Dorcheus, 58 Comp. Gen. 571 (1979); Earl S. Barbely, B-192839, May 3, 1979.

In order to reflect the above principles in the new STARCIPS system, the Assistant Comptroller states that there appear to be two alternative methods of processing compensatory time in relation to the section 5547 limitation, as follows:

"(1) Net the earned and taken hours applying the result at the applicable overtime rate. Add this amount to base and other premium pays to determine if the biweekly maximum has been exceeded. Cutback the compensatory hours as necessary and record the balance for future usage or paid overtime. \* \* \*

"(2) Apply compensatory hours earned during the pay period, exclusive of hours taken, at the applicable overtime rate. Add this amount to base and other premium pays to determine if biweekly maximum has been exceeded. Cutback the compensatory hours as necessary, and record the balance for future usage or paid overtime. Charge compensatory hours taken against compensatory balance beginning with the oldest balance. \* \* \*"

The Assistant Comptroller points out that while the first method simplifies system processing, it raises the question as to whether the section limitation on gross pay prescribed by 5 U.S.C. § 5547 is being circumvented.

The Assistant Comptroller states that the second method appears to be closer to the intent of 5 U.S.C. § 5547, but that it may cause the employee to have less compensatory time available for use than he or she had actually earned and taken. This would be true if no other compensatory time balances are available and compensatory time is cut back. It would then be necessary, he states, to use available annual leave or place the employee in a leave without pay status for the hours which were cut back.

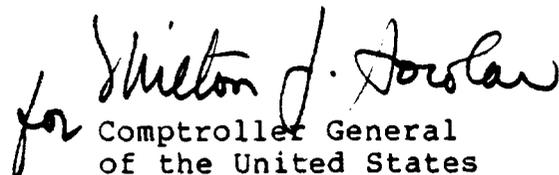
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The correct procedure to be followed in computing the maximum number of hours of compensatory time which may be credited to an employee in one pay period was initially established in our decision, 37 Comp. Gen. 362, previously cited. We stated that the agency must first ascertain the number of overtime hours for which the employee is entitled to receive compensation at the overtime rate applicable to his or her basic salary rate before reaching the aggregate limitation for the pay period in which the overtime services were rendered. This number of overtime hours will then constitute the maximum number of hours of compensatory time which may be credited to the employee in that pay period in lieu of overtime compensation. Thus, compensatory time takes the place of monetary premium pay for irregular or occasional overtime work and the hours of compensatory time may not exceed the number of hours for which the employee may receive overtime pay. See also Edward W. Dorcheus, supra, at 571 (1979); Jacqueline Bailey, B-164689, March 26, 1976.

Inasmuch as compensatory time is equivalent to overtime compensation, in determining whether an employee's aggregate rate of pay for any pay period will exceed the maximum rate for grade GS-15, we conclude that the provisions of 5 U.S.C. § 5547 require that the gross compensatory time earned, rather than the net amount of compensatory time earned and used by an employee in a pay period, be utilized by an agency in making the required computation. Thus, the second suggested method, the number of hours of compensatory time earned during the pay period, exclusive of the hours of compensatory time used, at the applicable overtime rate, appears to be in accord with the intent of the language establishing the aggregate salary limitation as set forth in section 5547.

The fact that in using such method of computation, the employee may have less compensatory time available for use than was actually earned or taken, is not controlling. The provisions of 5 U.S.C. § 5547 contain a mandatory maximum limitation. See Donald Bodine, 60 Comp. Gen. 198 (1981).

Accordingly, the procedure outlined in the second suggested method, as previously discussed, is the proper method to be used by the Department of the Army in redesigning STARCIPS.

*for*   
Comptroller General  
of the United States

